

SEP 10 1990

5WQP-TUB-8

Mr. Lonnie Brumfield, Chief
Permits Section
Office of Water Management
Indiana Department of Environmental Management
105 South Meridian Street
Post Office Box 6015
Indianapolis, Indiana 46206-6015

Re: Application for General Permit Authority

Dear Mr. Brumfield:

On April 6, 1990, you submitted to Ms. Cynthia Daugherty, Director, Permits Division, Headquarters, U.S. Environmental Protection Agency (U.S. EPA) and to my attention, Indiana's initial application for modification of the State's NPDES permit program for authority to issue general permits.

Enclosed are comments on that submission from the Program Implementation Branch, Headquarters, U.S. EPA. The Permit Section, Water Quality Branch, has also reviewed the submitted document and has no additional comments.

After you and your staff have had an opportunity to review the enclosed comments, any questions you may have before formally requesting general permit authority, may be directed to Jack Newman of my staff at (312) 353-2105.

Sincerely yours,

Kenneth A. Fenner, Chief
Water Quality Branch

Enclosure

cc: Gary Hudiburgh, (EN-336)
Brenda Sue Thorton, (EN-336)

Headquarter's Preliminary Comments on Indiana's Application for
Administering a General Permit Program

1. Comments on Indiana's Attorney General's (AG) statement.

A. Although the AG's statement cites appropriate statutory authority for the State to administer the general permit program, it does not cite the regulatory authority for the general permit program (see 327 IAC 5-4-8, Sec. 8 rules). The AG's statement should cite and discuss the state's regulatory authority for the general permit program.

B. The AG's statement does not cite or discuss the authority to enforce general permits. 40 CFR Part 123.23(c) requires the AG statement to certify that the State has adequate legal authority to issue and enforce general permits. As a result, the AG's statement should cite and discuss the statutory (Chapter 11) and regulatory authority for enforcement of general permits.

C. The AG's statement cites "IND. CODE § 13-7-2-15" as designating the department as "the water pollution agency for the State for purposes of the federal Safe Drinking Water Act...." The corresponding attached statute does not contain this provision. In any event, it does not need to be included.

2. Comments on Indiana's final rules governing the general permit program.

A. The Indiana rules as promulgated (327 IAC 5-3-6(f)) require general permits to be sent in draft form to the EPA for concurrence or objection during the final comment period. General permits for separate storm sewers, however, are exempted from this requirement.

This section also provides that

no final permit shall be issued if the regional administrator or the EPA deputy assistant administrator for water enforcement objects to the general permit within ninety (90) days from the date of publication of the public notice for the draft general permit.

Our corresponding regulations at 40 CFR Part 123.44(a)(2) provide EPA with 90 days from the date of receipt of the proposed general permit to comment upon, object to or make

recommendations with respect to general permits. The State should clarify that despite its regulations, EPA will have 90 days from receipt of the general permit to make general comments upon, objections to or recommendations on proposed general permits. This could be clarified in the MOA.

B. The Indiana rules as promulgated (327 IAC 5-4-8) allow the Commissioner to issue general permits for (1) separate storm sewers and (2) other point sources for which there are a number of minor point sources operating in a geographical area that meet the five characteristics outlined in 40 CFR Part 122.28 (substantially similar operations, discharges, etc.).

There are no substantive problems with this provision and it basically parallels the requirements outlined in 40 CFR Part 122.28. However, this language is more restrictive than 40 CFR Part 122.28. General permits do not need to be issued to cover only "minor" dischargers. If the state desires, the rules can be amended to allow them to issue general permits that are not limited to minor discharges.

C. 327 IAC 5-4-8 Sec. 8(d) (A-F) allows the Commissioner to require any person authorized under a general permit to apply for and obtain an NPDES permit if any one of six "cases" occurs.

This provision allows the Commissioner to require a person authorized under a general permit to apply for and obtain an NPDES permit for the same five reasons outlined in the corresponding federal regulations at 40 CFR Part 122.28 (b)(2)(i) (A-E). The Indiana rules have an additional provision that goes beyond the federal regulations that allows the Commissioner to require a permit when the discharge(s) is determined to be a "significant contributor of pollution". We interpret this provision to be more stringent than the federal provision.

3. Comments on the Program Description.

A. Section 4 (page 3) states that all dischargers will be required to submit Discharge Monitoring Reports (DMRs) "in accordance with the schedule contained in the general permits". The corresponding federal regulations require that permittees conduct monitoring with sufficient frequency to be representative of the monitored activity and that the results be reported to the permitting authority no less than once per year. (See 40 CFR Parts 122.44(i), 122.48.)

Indiana should provide some discussion of the minimum frequency of this monitoring under Indiana regulations.